

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**D. MCDOUGALD, et al.,
Plaintiffs**

v.

**JEFFREY BEARD, et al.,
Defendants.**

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C.A. No. 08-308 Erie

**District Judge McLaughlin
Magistrate Judge Baxter**

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

I RECOMMENDATION

_____ It is respectfully recommended that Plaintiff D. McDougald be dismissed from this case for his failure to prosecute.

II REPORT

Plaintiff D. McDougald, an inmate at the State Correctional Institution at Forest in Marienville, Pennsylvania, together with sixteen other named Plaintiffs, filed this civil rights action on November 6, 2008.¹ Plaintiff McDougald later filed a motion to proceed *in forma pauperis* (“ifp motion”) on December 19, 2008. By Order dated January 16, 2009, Plaintiff McDougald’s ifp motion was granted and he was ordered to pay an initial filing fee of \$ 13.33, together with the attached Notice and Authorization form, within twenty days of the date of the order. [Document # 6]. Because Plaintiff McDougald failed to timely pay the initial filing fee and file the Notice and Authorization form, this Court issued a show cause order on May 12, 2009, requiring him to do so by May 26, 2009, or suffer dismissal from this case for failure to prosecute. [Document # 13]. To date, Plaintiff McDougald has failed to comply with this Order.

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Fourteen of the original named Plaintiffs were later dismissed from this case by Memorandum Order of District Judge Sean J. McLaughlin, dated April 23, 2009, due to their failure to either pay the filing fee or file a motion to proceed *in forma pauperis*. [Document # 12].

The United States Court of Appeals for the Third Circuit has set out a six-factor balancing test to guide a court in determining whether dismissal of a case is appropriate. Poulis v. State Farm Fire and Casualty Co., 747 F.2d 863 (3d Cir. 1984). The court must consider: 1) the extent of the party's personal responsibility; 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4) whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and 6) the meritoriousness of the claim or defense. Id. at 868. Not all of the six factors need to weigh in favor of dismissal before dismissal is warranted. Hicks v. Feeney, 850 F.2d 152 (3d Cir. 1988).

Applying the Poulis factors to the present matter, this Court recommends the dismissal of this matter. Since the filing of this matter, Plaintiff McDougald has taken none of the necessary first steps to prosecute this case. Further, Plaintiff McDougald has failed to timely comply with multiple orders of this Court. Plaintiff McDougald is proceeding *pro se* and therefore bears all of the responsibility for any failure in the prosecution of his claims. Alternative sanctions, such as monetary penalties, are inappropriate with indigent parties. Although Plaintiff McDougald's allegations may state a claim upon which relief could be ultimately be granted, the merits of the claim are impossible to determine at this early stage of the proceedings.

III CONCLUSION

For the foregoing reasons, it is respectfully recommended that Plaintiff D. McDougald be dismissed from this case for his failure to prosecute.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Local Rule 72.1.4B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. No extensions of time will be granted. Failure to timely file objections may constitute a waiver of any appellate rights. See e.g., Nara v. Frank,

488 F.3d 187 (3d Cir. 2007).

S/Susan Paradise Baxter
SUSAN PARADISE BAXTER
Chief U.S. Magistrate Judge

Dated: June 10, 2009

cc: The Honorable Sean J. McLaughlin
United States District Judge